Supreme Court, U. S.
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In the Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-61

DORTHA LEIGH, Widow and Surviving
Joint Tenant of J. W. Leigh,
Appellant,

VERSUS

OKLAHOMA TAX COMMISSION,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF THE
STATE OF OKLAHOMA

RESPONSE TO APPELLEE'S MOTION TO DISMISS OR AFFIRM

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September, 1977

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The Appellant, Dortha Leigh, in response to the Appellee's said Motion to Dismiss or Affirm, responds thereto by argument and authority under the same headings used by the Appellee. Since the Appellee does not challenge any authority set out in Appellant's Jurisdictional Statement, the Appellant considers that those cited United States Supreme Court opinions do have a bearing upon this appeal, and no further authorities will be submitted other than the United States Supreme Court case(s) on prima facie evidence to straighten out the Appellee's citation of an Atlantic Reporter case as hereinafter set out.

I.
RESPONSE TO "THE STATE STATUTE INVOLVED AND THE PROCEEDINGS BELOW"

A. Response to "The Statute"

The statute says what it says. The Appellee's recitation verifies the Appellant's position. But, nothing is said to refute Appellant's contention that the Oklahoma Tax Commission's policy required proof of the contribution to the estate by a surviving wife spouse and did not require such proof by the surviving husband spouse.

B. Response to "The Proceedings Below"

Nothing here to respond to.

II.
RESPONSE TO "ARGUMENT"

A. Response to "The Case Presents No Substantial Federal Questions Necessary to Support Jurisdiction"

Appellant's response is that the recitation in Appellee's Motion to Dismiss or Affirm glides over the "fact" statement in the Attorney General's Opinion (Appendix "A" to Appellant's Statement as to Jurisdiction") that the Oklahoma Tax Commission's policy that all jointly owned property was included in the estate when the husband died, but that when the wife died none was included in his estate. At no place in the Motion to Dismiss or Affirm, nor in any pleading herein, has the Oklahoma Tax Commission stated that no such policy existed, and every judge, lawyer, and accountant in the state knows that such policy did exist and was a fact of life as to estate tax in Oklahoma.

The authorities cited by Appellee do not touch top, side, or bottom the opinions of the United States Supreme Court bearing upon the SUBSTANTIAL FEDERAL QUESTIONS raised in Appellant's Jurisdictional Statement—pertaining to the unconstitutional application of a constitutional statute by discriminating between males and females.

B. Response to "The Judgment Rests on an Adequate Non-Federal Basis"

See response to II. A. above, still no denial of the Oklahoma Tax Commission policy as alleged by Appellant.

Appellant does not need to cite the United States Supreme Court an Atlantic Reporter case to define "prima facie evidence" as used in the Oklahoma statute. Appellant refers the United States Supreme Court to its own cases.

Prima facie evidence of a fact, says Mr. Justice Story, is such evidence as, in the judgment of the law, is sufficient to establish the fact, and if not rebutted, remains sufficient for that purpose.—*Crane* v. *Morris*, N.Y., 31 U.S. 598, 6 Pet. 598, 611, 8 L.Ed. 514, cited in *Lilienthal's Tobacco* v. *U. S.*, N.Y., 97 U.S. 268, 24 L.Ed. 901; *State* v. *Roten*, 86 N.C. 701, 703; *U. S.* v. *Wiggins*, Fla., 39 U.S. 334, 347, 14 Pet. 334, 347, 10 L.Ed. 481; *Blough* v. *Parry*, 43 N.E. 560, 564, 144 Ind. 463; *Smith* v. *Burrus*, 16 S.W. 881, 106 Mo. 94, 100, 13 L.R.A. 59, 27 Am.St.Rep. 329.

Again, Appellant Dortha Leigh urges the United States Supreme Court to read her Affidavit (Appendix "F" to Jurisdictional Statement) and considering the fact that no evidence was offered contrary thereto, it just has to stand

as uncontested creditable evidence. BUT, Appellee misses the point—*it is uncontested that the Oklahoma Tax Commission's policy required such affidavit only from the surviving spouse if the surviving spouse was the wife.*

C. Response to "The Case Is Not Important"

The Appellee says that the law which the Appellee applied differently as to whether the surviving spouse was male or female is not *now* the law in Oklahoma. This is true.

But, the case *is important* to the Appellant, Dortha Leigh. The discriminatory application of the former Oklahoma estate tax statute has taken $3,814.91, with legal interest since November, 1975, from her just as surely as if it had been taken from her at gunpoint. $3,814.91 may not be important to the Appellee, Oklahoma Tax Commission, but Appellant assures the United States Supreme Court that it sure is to her.

D. Response to "The Decision Below Is So Obviously Correct As to Warrant No Further Review"

The only thing here deserving a response is the statement, "The only evidence submitted in support of Appellant's allegations of discriminatory application of the statute taxing the Appellant was the Attorney General's opinion (Appendix "E" to Appellant's Statement as to Jurisdiction)."

Well, that was the *only* such evidence. The Attorney General said the Oklahoma Tax Commission's policy required proof of contribution only when the surviving spouse was the wife. When the Appellee offered *no* evidence to the

contrary, why would the Appellant need to depose or subpoena fifty executors, lawyers or accountants from Payne County to testify otherwise?

CONCLUSION

The Appellant, Dortha Leigh, respectfully suggests to the United States Supreme Court that this case is important to her because she has been required to pay, under protest, $3,814.91 to the Appellee, Oklahoma Tax Commission, in violation of her rights under the Constitution of the United States as set out in her Jurisdictional Statement filed herein, and the Motion to Dismiss or Affirm does not point out to the highest court in this land how she has not correctly cited previous United States Supreme Court opinions that show that valid laws *must* be fairly applied regardless of sex, etc. Not one authority set out in Appellant, Dortha Leigh's Jurisdictional Statement is challenged in Appellee's, Oklahoma Tax Commission's, Motion to Dismiss or Affirm.

Respectfully submitted,

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September, 1977

CERTIFICATE OF MAILING

I hereby certify that on this ____ day of _____, 1977, three copies of Response to Appellee's Motion to Dismiss or Affirm were mailed, postage prepaid, to Marjorie Patmon, General Counsel, Oklahoma Tax Commission, 2501 Lincoln Boulevard, Oklahoma City, Oklahoma 73194, and Mr. Clyde E. Fosdyke, 2501 Lincoln Boulevard, Oklahoma City, Oklahoma 73194, Counsel for Appellee, Oklahoma Tax Commission.

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